

APPROVED: MEETING NO. 42-85

ATTEST: *Helen M. Heneghan*

MAYOR AND COUNCIL

ROCKVILLE, MARYLAND

MEETING NO. 38-85

July 22, 1985

The Mayor and Council of Rockville, Maryland, convened in general session in the Council Chamber, Rockville City Hall, Maryland at Vinson Street, on Monday, July 22, 1985, at 8:00 p.m.

PRESENT

Mayor Viola D. Hovsepian

Councilman Steve Abrams

Councilman Douglas Duncan

Councilman Peter Hartogensis

Councilman John Tyner

The Mayor in the Chair.

In attendance: City Manager Larry Blick; City Clerk Helen Heneghan; City Attorney Paul Glasgow.

Re: City Manager's Report

Mr. Blick reported the following:

1. A use permit and record plat for the hotel/office complex on the City property in the Town Center will be on the Planning Commission Agenda Wednesday evening. The hotel will include a 5,670 square foot ballroom, meeting rooms and 4,125 square foot restaurant and lounge, a swimming pool and health club. There will be 110,000 square feet of office area and 5,000 square feet devoted to retail use. A two and a half story garage will be built below the hotel.

2. This evening at 7:00 p.m. the bridge at Gude Drive over I-270 was opened. The span connects Research Boulevard with Piccard Drive. Construction was engineered and handled by the City. Due to the importance of Gude Drive to County circulation, Montgomery County contributed 75% of the costs.

3. The Wootton High School lights cost \$62,626. The City will pay half. A representative of the Booster Club will be present this evening to present \$5,000 to the City.

Councilman Abrams asked if the staff were preparing an answer to a report by Councilman Scull on municipal construction over the past decade. The City Manager said once copies of the report are available, a response will be provided. Councilman Abrams added that it is most fitting that the Gude Drive Bridge was opened tonight and the City has things in place when the need exists. Councilman Abrams also asked that clarification be sent to Dr. Sweeney of the School Board since there seems to be some question of elementary school articulation. Mr. Hobbs said this will be taken care of.

Re: Presentation of
City's Contribution
to Day Care Facility,
the Children's Place

Mr. Bennet Connelly and Charles Short of the Family Resources Department of Montgomery County, accepted the \$10,000 check on behalf of the Children's Place. They thanked the City for its support and said it is good that the Hungerford Stoneridge School is available for this program. The County has worked with the community, one of whom, Helen Saunders, is present this evening, to retain its use as a school. At the same time the Family Resources Department is working to locate a day care at Lone Oak School.

Re: Appointments

Mayor Hovsepien made the following appointments, they were confirmed by the Council:

Sign Review Board: Sue Semonis - reappointed as Chairman - one year term
Don Johnson - reappointed as member - one year term

Recreation and Parks Board: Charles Carroccio - reappointed - two year term

Re: Citizen's Forum

The Mayor and Council opened the meeting to those citizens who addressed the Mayor and Council.

1. Helen Saunders, Secretary of the Hungerford/Stoneridge Civic Association. Mrs. Saunders said she is speaking tonight on behalf of Tony Kalica, the president of the Association, and has come to thank the Mayor and Council for its support of the community in the use of Hungerford School.
2. Roger Langley, 625 Smallwood Road. Mr. Langley spoke to the Mayor and Council and briefed them on the trash collection problems he has been having. The City Manager was instructed to get back to the Mayor and Council with a report.
3. Margaret Katz. Margaret briefed the Mayor and Council on problems with Tribune United Cable and its terrible service both for the reception and also that it is unsafe due to being grounded improperly. Councilman Abrams thanked Mrs. Katz for bringing the matter before the Council and noted that there was a problem during a bad storm last week with two television sets in his neighborhood. The City Manager was asked to look to the City's inspection process for cable installation. Councilman Duncan requested a work session with Mr. Hobbs and the cable advisor since he feels it is time to do something about the service.
4. Ardelle Shirley, 605 Douglass Avenue of the Lincoln Park Area. Mrs. Shirley, on behalf of the Lincoln Park Community invited the Mayor and Council to Community Day beginning at noon, Saturday, July 27. She said the day will be marked by special awards, a good deal of fun and the community choir will appear.
5. Lowell Baier, 11300 Rockville Pike. Mr. Baier told the Council of the creation of the Rockville Pike Business Association which is made up of property owners or tenants all along the Pike to the mixing bowl and the contiguous

streets. The association which has been incorporated will be looking out for its neighborhood just as civic associations look out for their neighborhoods. The officers are President Lowell Baier, Vice President Joe Renzetti, Secretary Ray Whalen, Treasurer John England.

6. Michael Patterson, Chairman of the Historic District Commission. Mr. Patterson told the Mayor and Council that on July 15 when public hearings were held by the Mayor and Council the cable cast was carried live. However, when the re runs were shown, the meeting was edited and did not show the hearing for Messrs. Rand and Metro. He read a response from Mr. Vandrey to his question and also read a letter to the Editor by a citizen on the subject. He said it is his feeling that it was poor judgment to delete those hearings since it was a very important matter.

7. Bill Anderson of Twinbrook told the Council that there are neighborhood problems the City cannot solve. He has appeared before the Mayor and Council before and the speeding cars, screaming and hollering at 5900 Halsey have grown worse. The City Manager said the City is well aware of the situation but unless police are on the scene when it happens and observe the incident, it is necessary for residents to swear out warrants. However, the City is anxious to clear up the situation.

8. Sue Collett, 1001 Rockville Pike, Historic District Commission member. Ms. Collett complained to the Mayor and Council of the lack of television coverage on Messrs. Metro and Rand. She said the newspaper headlines should have been rebutted on TV and cutting any coverage is wrong. Something should be done to mitigate the damages that were done to these people. She believes the Mayor and Council should have oversight over what is shown on cable in order to preserve the integrity of Board and Commission members.

9. Richard Arkin, 525 Lynch Street. Mr. Arkin addressed the Mayor and Council concerning the revision of the City's Master Plan which he spoke of last week and at that time Councilman Tyner said it would not be a revision but it would simply be a recodification. Mr. Arkin said he feels a comprehensive review and revision could assist orderly development in the City. It would also be a time to reexamine the maximum expansion limits in order to have some control of the area just outside the City. The present piecemeal planning process is wholly inadequate. Councilman Tyner clarified his remarks to Mr. Arkin and explained that once the document is recodified it can be easily revised and the codification is just a first step.

10. Robert Kline of Twinbrook. Mr. Kline addressed the problems in the Twinbrook neighborhood and said he has a young son and daughter who are constantly being harassed, property is being destroyed and objects being thrown at their vehicles. He noted the police said there is nothing they can do and he asked for help. The City Manager reassured Mr. Kline that police patrols would be stepped up so that an early solution might be found.

There being other citizen wishing to be heard, the Mayor closed the citizens forum portion of the meeting.

Re: Approval of City/
State Bridge Funding
Agreement -- Ritchie
Parkway - Seven Locks
to Rockville Pike

The bridge to be constructed over I-270 in conjunction with the Ritchie Parkway roadway project is the responsibility of the Maryland State Highway Administration (MDSHA). Their responsibility stems from an action taken by the MDSHA in 1956 to permanently close off Monroe Street during the construction of I-270. A commitment was made by the State at that time to provide a bridge at such time as traffic densities warrant, as determined by the local jurisdiction.

The agreement, which has been reviewed by appropriate City departments, has been the subject of discussions with MDSHA representatives for more than two years. It is a supplement to a standard agreement signed in 1982 for State/Federally funded projects. Basically, the agreement sets the precise responsibilities of the MDSHA and City, such as project management, specific payment limits, funding disbursement arrangement and ultimate maintenance responsibilities. Many of the provisions are mandatory conditions imposed by the Federal Highway Administration, as is the agreement itself, as a pre-requisite to authorization of Federal funding. This lengthy approval process has not affected the Ritchie progress as the State and City agreed to move ahead in advance of execution.

Some key features of the agreement are:

1. The entire project must meet minimum State/Federal standards for construction, maintenance, and traffic control with all plans and contracts subject to approval by those agencies.
2. Funding is under the Federal Interstate Program with 90% Federal aid. The major portion of the bridge will be funded 10% by the State with the bike path portion funded 10% by the City.
3. The City will manage the entire project including engineering, right-of-way acquisition, construction and inspection processes.
4. The State provides the preliminary engineering and environmental analysis for the entire Ritchie Parkway project, at no cost to the City.
5. The City will own and maintain the bridge structure upon satisfactory completion of construction.

The agreement has been reviewed and accepted by the City Attorney.

On motion of Councilman Duncan, duly seconded and unanimously passed, the Ritchie Parkway funding agreement was approved by the Mayor and Council.

Re: Decision: Adoption of
Resolution: Pursuant to
Article XI-E of the
Constitution of Maryland,
Section 13 of Article 23A
of the Annotated Code of
Maryland, and the Charter
of the City of Rockville
to amend Section 5 of
Article III of the Charter
so as to provide that a
vacancy occurring in the
office of the Mayor within
the first six months of
the terms shall be filled
by special election

Councilman Abrams moved, duly seconded that the Mayor and Council adopt the Resolution.

Councilman Abrams offered an amendment to the Resolution, changing the time period from six months to sixteen months and providing that any vacancy in the office of the Mayor in the sixteen month period be filled by a unanimous vote of the Council. In the event no unanimity can be reached within 14 days, the Chairman of the Planning Commission would assume the Mayor's Chair. If the Chairman of the Planning Commission declined, then the Chairman of the Board of Appeals would become Mayor. It was Councilman Abrams' feeling that this election process would avoid the politics of the situation and the expense of a special election does not justify what it serves.

Councilman Hartogensis said although he could agree with the change from six to sixteen months, he had a problem with the remainder of the amendment, particularly the unanimity. He added that membership on the Planning Commission or the Board of Appeals does not necessarily qualify a person for the position of Mayor and he says that speaking as a former member of both boards. The only office that prepares a person for Mayor is that of Council. He countered by suggesting that after the sixteen month period the term of Mayor could be divided by four and each member of the Council serve one-fourth of the term.

Councilman Duncan said he would agree to go with the sixteen month change, however he disagreed with allowing one councilmember to have veto power over the others, as the unanimity clause would, and at the same time Councilman Hartogensis' suggestion of taking turns would preclude the appointment to add a fifth member to the Mayor and Council.

Mayor Hovsepian said at the original time the resolution was suggested she thought one year but the Board of Elections thought it was too short a period to the next election since the person would have less than half a term to serve. The City Attorney pointed out that if the Mayor and Council wish to change the time period to sixteen months, it would necessitate another hearing since the requirements for Charter amendments are very exacting. After further discussion, the Council agreed to lay over a decision until the next meeting. In the meantime, Councilman Abrams withdrew his amendment and agreed to the layover.

The Mayor and Council unanimously agreed to reopen the record and hold it open until 5:00 p.m. on August 2 for the inclusion of further material after tonight's discussion.

Re: Decision: Adoption of
Resolution: Pursuant to
Article XI-E of the
Constitution of Maryland,
Section 13 of Article 23A
of the Annotated Code of
Maryland, and the Charter
of the City of Rockville
to amend Section 1.a. of
the Article II of the
Charter so as to limit the
terms of the Mayor and
Councilmembers to two (2)
and three (3) consecutive
terms in office,
respectively

8 Councilman Tyner moved, duly seconded, to reject the resolution.

Councilman Duncan felt it was wrong to have such a restriction at this level of government. It runs counterproductive to good government. Councilman Abrams said he heard nothing compelling to deem it necessary. Councilman Hartogensis said it places an artificial limitation on the Council. The evils of the amendment forcing out a good public servant outweigh the opposite concern of someone staying too long. In the later case, the voters have a remedy. Mayor Hovsepian spoke for passage of the amendment. She said that many capable people have no opportunity to serve when terms are not limited. And, after a time in office, people lose the freshness they originally brought to the office. The public voted in favor of it and she cited the statistics from the last election. Councilman Abrams said although the Mayor had noted many statistics she did not note the large percentage of voters who returned a councilman to office for his fourth term inspite of the vote on the amendment. Councilman Tyner addressed the Mayor and noted that freshness is just a quality of mind. The ability to work with the citizens is what is important. The Council discussed the last election and the referendum and the questions not being discussed.

Councilman Tyner's motion to reject the Charter Amendment was approved, only the Mayor voting against the motion.

Re: Decision: Approval of
Annexation Petition, X-96-
85 - Ali Mustafa Ali
Elquirem; Applicant,
requests the enlargement
of the boundaries of the
City of Rockville by
including 2.00 acres of
land located at the south-
west corner of Westmore
Road and Westmore Avenue

On motion of Councilman Abrams, duly seconded and unanimously passed, the staff was instructed to prepare the necessary legal documentation to approve annexation application, X-96-85, and place it in the I-1 Zone provided an agreement is made for dedication of a right-of-way.

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Re: Decision: Removal or temporary suspension of A. Howard Metro from the office of Commissioner on the Historic District Commission

Councilman Tyner asked to make a statement which noted that the Mayor and Council this evening are confronted with the first test of the provisions of a revised ethics ordinance adopted earlier this year and legitimate and thoughtful points have been raised during the public hearing. Since Councilman Tyner does not have all the facts he needs in order to make a decision, he moved that the City obtain a jurist or law professor specializing in constitutional law to provide a written opinion of the underlying principals and directions in this instance. He asked that the City Attorney submit three names from which the Council could choose. Councilman Abrams seconded the motion.

Councilman Hartogensis said that although he shares the entire Council's concern since it is dealing with people who volunteer their time to the City with no compensation, he cannot agree with the contentions raised by Mr. Metro during the hearing. Since he feels non-compliance is not the way to raise the issues and the City's experience with the law shows it is not unduly onerous. The submission of financial disclosure statements in all instances serves a valid public purpose and for those reasons he must support and is prepared to vote for the removal of Mr. Metro. Councilman Tyner again suggested that the Mayor and Council should look at the constitutional questions before taking action.

Councilman Abrams said he can support in concept what Councilman Tyner is proposing although he does not feel it is a constitutional question but a policy question since he has a problem with the rigidity of the law. He said in one sense the City of Rockville celebrates the birthday of Martin Luther King yet does not embrace his theory of civil disobedience. He does not feel it is an ethics

law violation but it is a policy issue and he would support Councilman Tyner if the Mayor and Council could review the policy considerations behind the questions and then could seek out an expert application of the ethics law.

Councilman Duncan disagreed with the comments made by Councilman Tyner and Abrams and said he is prepared to enforce the ordinance as it is worded since an effort was made during the hearings on the ordinance to include the comments of anyone interested or affected by the ordinance. He still believed the financial disclosure serves a valid public purpose.

Mayor Hovsepian said she agreed with Councilmen Duncan and Hartogensis. A good deal of time was spent on this. If Mr. Rand and Metro plan to proceed in court, the City will get a constitutional decision handed down by the Court. She, too, valued the services these people gave to the City; however there was a place and time for protest and that time is not now.

Councilman Tyner expressed his sadness by his colleagues position. He said further information on the basic philosophy behind the men's decision could be considered and an outside opinion could be helpful. Councilman Duncan asked the City Attorney if he felt this law violates the constitution. The City Attorney said it did not. Councilman Duncan said he was satisfied with that.

Councilman Tyner's motion to retain outside legal assistance was defeated, only members Abrams and Tyner voting aye, Mayor Hovsepian and Councilmembers Duncan and Hartogensis voting nay.

On motion of Councilman Hartogensis, duly seconded, the City Attorney was instructed to draft a resolution removing A. Howard Metro from the office of commissioner for the reasons cited that were the subject of a public hearing. The motion passed, Councilmembers Abrams and Tyner voting nay.

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Re: Decision: Removal or temporary suspension of Charles S. Rand from the office of Commissioner on the Historic District Commission

Councilman Hartogensis moved, duly seconded that the City Attorney prepare the necessary legal documentation to remove Charles S. Rand from the office of commissioner for the reasons cited in the hearing. Councilman Abrams urged the Mayor and Council not to take this action since he felt it is a policy question more than an ethics question and he has a great deal of difficulty with it. The Mayor and Council have permitted representation before the Boards and commissions yet they find fault with representation before the court. He would prefer to see the ordinance changed. Councilman Duncan said although portions of it were changed at one time to allow representation before boards and commissions perhaps that portion should be changed back. Councilman Hartogensis spoke in favor of his motion and said there is a rational basis for the inclusion of this item in the ordinance since if somebody is a representative of the City they cannot at the same time represent adverse opinions against the City and being members of the boards and commissions they are privy to the City's operation. The law as stated serves a valid purpose.

Councilman Abrams thought perhaps the provision might be included somewhere in the City's policies but not within the Ethics Ordinance. Mayor Hovsepian asked Councilman Abrams to provide information on a better place to put this if not in the Ethics Ordinance.

Councilman Hartogensis' motion passed, Mayor Hovsepian and Councilmembers Duncan and Hartogensis voting aye, Councilmembers Abrams and Tyner voting nay.

Re: Introduction of
Ordinance: To Amend
Chapter 14 of the
"Laws of Rockville",
entitled Building
Code to Adopt the
1984 Building
Officials and Code
Administrators, Inc.,
(BOCA) Basic/National
Building Code

On motion of Councilman Duncan, there was introduced upon the table, an ordinance amending Chapter 14 of the Laws of Rockville entitled Building Code to adopt the 1984 Building Officials and Code Administrators, Inc., Basic National Building Code, said ordinance to lay over at least one week before final action is taken.

Re: Introduction of
Ordinance: To Amend
Chapter 14A of the
"Laws of Rockville",
entitled Plumbing
Code to adopt the
1984 BOCA
Basic/National
Plumbing Code

On motion of Councilman Hartogensis, there was introduced upon the table, an ordinance amending Chapter 14A of the "Laws of Rockville" entitled Plumbing Code, to adopt the 1984 BOCA Basic/National Plumbing Code, said ordinance to lay over at least one week before final action is taken.

Re: Introduction of
Ordinance: To Amend
Chapter 14B of the
"Laws of Rockville",
entitled Electrical
Code to adopt the
1984 National
Electrical Code

On motion of Councilman Tyner, there was introduced upon the table, an ordinance amending Chapter 14B of the "Laws of Rockville", entitled Electrical

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Code, to adopt the 1984 National Electrical Code, said ordinance to lay over at least one week before final action is taken.

Re: Introduction of
Ordinance: To Amend
Chapter 14F of the
"Laws of Rockville"
entitled Mechanical
Code to adopt the
1984 National
Mechanical Code

On motion of Councilman Tyner, there was introduced upon the table, an ordinance amending Chapter 14F of the "Laws of Rockville", entitled Mechanical Code, to adopt the 1984 National Mechanical Code, said ordinance to lay over at least one week before final action is taken.

Re: Introduction of
Ordinance: To Amend
Chapter 14G of the
"Laws of Rockville",
entitled Energy
Conservation Code to
adopt the 1984 BOCA
Basic/National Energy
Conservation Code

On motion of Councilman Hartogensis, there was introduced upon the table, an ordinance amending Chapter 14G of the "Laws of Rockville" entitled Energy Conservation Code, to adopt the 1984 BOCA Basic/National Energy Conservation Code, said ordinance to lay over at least one week.

Re: Introduction of
Ordinance: To Amend
Chapter 14H of the
"Laws of Rockville"
entitled One and Two
Family Dwelling Code
to adopt the 1983
Council of American
Building Officials
(CABO) One and Two
Family Dwelling Code

On motion of Councilman Hartogensis, there was introduced upon the table, an ordinance amending Chapter 14H of the "Laws of Rockville" entitled One and

Two Family Dwelling Code to adopt the 1983 Council of American Building Officials (CABO) One and Two Family Dwelling Code, said ordinance to lay over at least one week before final action is taken.

Re: Approval of Minutes

On motion of Councilman Duncan, duly seconded and unanimously passed, the Minutes of Meeting No. 32-85, May 27, 1985, were approved as written.

On motion of Councilman Duncan, duly seconded and unanimously passed, the Minutes of Meeting No. 35-85, June 24, 1985, were approved as amended.

Re: Correspondence

The Mayor and Council noted the following items of correspondence:

1. Barry Scher, Treatment Center, re reconsideration of permit parking decision

Councilman Duncan noted that reference to cost is given in this letter and the cost includes the special exception the crossing guard, moving and rental. It seems that it covers more than the parking district. Mayor Hovsepian noted more information would be coming from the staff soon.

2. John Kizler, re Dawson Farm Park
3. Department of Transportation, re Storm Water Management for I-270 widening
4. Sue Eckstein, re Fortune Park Development
5. Justina Grauman, re neighborhood problem

Councilman Hartogensis asked if this is being taken care of. The City Manager said the Director of Recreation and Parks is looking into this. Councilman Abrams noted it might be gabions that might be causing the problems.

6. James E. Cronin, re meeting with School Board
7. Governor Hughes, re appointment of Mr. Moser
8. MML, re acknowledgement of dues payment
9. Gloria Gridley, re complaint

Councilman Hartogensis asked if any advance warning is given such as a card on the door. The City Manager said there is a set of procedures and he will show those procedures to the Council.

Re: Information Items

The Mayor and Council noted the following items of information:

1. Copy of Montrose Civic Association letter re program scheduling at Recreation Center
 2. Copy of Montrose Civic Assoc. Letter to Dr. Cody re Area 2 Study Alternatives
Copy of Wootton PTA Civic Assoc. letter to Dr. Cody re Area 2 Study Alternatives
 3. Copy of letter from Maryland Historical Trust re FY 85 Certified Local Government Share funds
 4. Copy of letter to Police from Del. Boergers re safety on Dundee Road
 5. CDHA Project Report
 6. Mayor's letter to DOT re noise barriers on I-270
 7. Memo re Rockville Day Care Association
 8. Public Works Project Status Report
 9. Memo re Rockville representative on County Cable Community Advisory Committee
- Mayor Hovsepian asked the Council for suggestions. Councilman Hartogensis suggested there might be a member of the Science and Technology Commission that might help. Mayor Hovsepian asked that the vacancy be advertised.
10. Information on Montgomery County Alternative Transportation Strategies Meeting
 11. 1986 Legislative Requests
 12. ACSC activities
 13. New York Times Article on former intern
 14. Copy of letter to 7-11 asking for assistance
- Councilman Hartogensis said he hopes that the City gets cooperation from this letter.
15. Responses to citizen complaint
 16. Thank you note from Americana

Re: New Business

1. Councilman Abrams brought to the attention of the Council an item submitted by the City Manager.

The City will take deliver next week of six replacement vehicles for the Police Department. The vehicles were ordered in January 1985 and were budgeted in FY 1985. The staff has been advised that the vendor, Sport Chevrolet, can deliver an additional vehicle at the same unit price as the original six. This seventh vehicle is needed to replace one of the two vehicles that was demolished early this year. Additionally, the seventh vehicle is budgeted in the vehicle replacement budget for FY 1986.

Staff recommends that the City take advantage of this opportunity. In order to do so, however, a modification to the purchase order must be approved by Mayor and Council. As delivery of the vehicle will occur next week, staff will need Mayor and Council approval tonight.

The addition of the seventh vehicle will increase the purchase order as follows:

Original six vehicles	\$62,935.90
Additional seventh vehicle	\$73,425.31
Increase	\$10,489.41

On motion of Councilman Hartogensis, duly seconded and unanimously passed, authorization was given to the staff to purchase the seventh vehicle.

2. Councilman Abrams said that a citizen came to him Saturday and said maintenance is not up to par at Rockcrest. There is a high overgrowth and because of the trunks of trees lying in the creek, rats are beginning to gather. He said he would like a report back from the City Manager. If additional funds are needed the Mayor and Council will look into it.

3. Councilman Abrams said citizen's concerns were raised to him on Saturday concerning trash collection and he noted a pamphlet that the City has

that should be put in the Newsletter and information should be put on Channel 23. At the same time, with such a large undertaking the City should be commended on the paucity of the complaints.

Re: Work Session on
Housing Policy

The Mayor and Council reviewed the document from the previous work session and complimented the staff and had few changes. Councilman Abrams suggested that the staff prepare a report on the option of a residents being allowed in all zones.

On motion of Councilman Tyner, the draft was approved and the staff was asked to prepare a resolution for formal adoption.

Re: Adjournment

There being no further business to come before the Council in general session, the meeting was adjourned at 10:50 p.m. to convene again in general session on Monday, August 5, 1985, at 8:00 p.m. or at the call of the Mayor.